ARTICLE 12 INSPECTION, ENFORCEMENT, VIOLATION AND PENALTIES

DIVISION 1 GENERAL

Section 12.100 General Enforcement Procedures

These procedures apply unless the particular provision, context and violation call for something different according to this code or state law.

A. Notification of Violators

- 1. **Requirement of Notice**. The County shall send notice of a violation of the Code to the occupant, developer, and owner (if not the same) by first class mail to each person's last known address and/or by hand delivery and by posting on the site in a clearly visible location near the entrance road to said property.
 - a. <u>Content of Notice</u>. The Notice shall contain the following information:
 - (1) A list and description of all violations with references to the section or sections of the Code violated.
 - (2) An order to the occupant, developer, and/or owner to cease all unpermitted or prohibited activities.
 - (3) An order to the occupant, developer and/or owner to attain compliance within thirty (30) days.
 - b. <u>Response</u>. Any person who receives notice of a violation of the Land Use Code, shall within thirty (30) days:
 - (1) Restore the site to compliance and request an inspection of the property by the County to demonstrate that compliance has been attained, or
 - (2) File a written request with the County for an extension of time to attain compliance, showing good cause for each extension, with such extensions limited to sixty (60) days ending with an inspection of the property by the County to confirm compliance.
- B. **Legal Action**. In the event of a violation, the County shall seek penalties and remedies through legal action against the occupant, developer or owner who fails to attain compliance within the specified time, or to show on appeal that a violation has not occurred.
- C. **Public Endangerment**. The enforcement procedure provided herein may be accelerated where the County finds the public health, safety, welfare, or the environment could be

endangered by a continuing violation. In such cases, the County Attorney shall take immediate action to end the danger to the public health, safety, welfare, and the environment through, but not limited to ex-parte restraining orders as authorized under the Colorado Rules of Civil Procedure and/or action by local law enforcement or public safety agencies as deemed appropriate and necessary.

Section 12.110 Remedies

- A. **Violations**. Violations of this Code may be abated under the procedures and standards of this Section, at the election of the County Attorney. However, this procedure shall not be the sole remedy available, and the County may enforce this Code in any manner provided by law.
- B. Withholding Land Use Permits. The County may withhold or deny future Development Permits, building permits, plat approvals, or any other administrative actions on any land as to which a notice of violation has been issued, and the violation has not been timely corrected. The County may require correction of the violation as a condition of nay future Land Use Permits, plat approvals, or any administrative action. This remedy shall apply regardless of whether the applicant for the subsequent permit is responsible for causing the uncorrected violation.
- C. **Withdrawing Land Use Permits**. The County may withdraw current Land Use Permits, plat approvals or any other administrative actions that have been issued for property as to which a notice of violation has been issued and the violation has not been corrected as required in this Code. Upon correction, the Land Use Permit shall be reinstated.
- D. Cease and Desist Orders. After notice of a violation and an opportunity to correct the violation, the County may halt work on any land which there is an uncorrected violation of a provision of this Code or of a permit issued hereunder, through issuance of a cease and desist order. All work shall immediately halt upon issuance of such order. If work continues, the development shall be in violation of this Code.
- E. **Injunction**. In case any building or structure is or is proposed to be erected, constructed, reconstructed, altered, maintained or used in violation of the provisions of this Code, the Board, the district attorney or any owner of real property within Costilla Count, in addition to other remedies provided by law, may institute an injunction, mandamus, abatement or other appropriate action or proceeding to prevent, enjoin, abate or remove such unlawful erection, construction, reconstruction, alteration, maintenance or use.
- F. **Specific Performance**. The County may seek specific performance of the terms or conditions of any agreement or permit issued under this Code.
- G. **Cumulative Remedies**. All remedies provided for in this section are cumulative, are not exclusive, and shall be in addition to any other remedies provided by law. To the extent that Colorado law may limit the availability of a particular remedy for a particular violation or a part of a violation, such remedy shall remain available for other violations of other parts of the same

violation, and all other remedies shall remain available for the same violations or part of a violation.

Section 12.120 Code Enforcement

A. Inspection and Administrative Action against Violations

- 1. **Administrator Authorized to Inspect.** The Land Use Administrator is empowered to inspect and examine any building, other structure, or parcel or other area of land where he has reasonable cause to believe that a use exists or construction or alteration work is being performed, or has been performed, in violation of the applicable provisions of this Code. When the enforcing official has reasonable cause to believe that a violation of this Code is likely to exist on a premises, and that entry onto the premises is necessary to verify the violation, the enforcing official shall first make a reasonable effort to locate the owner or other person having charge or control of the premises, or portion thereof desired to be inspected, and request consent to enter and inspect the premises. If the owner or other person in charge or control of the premises cannot be located or if entry is refused, the enforcing official may seek entry by submitting a sworn affidavit to the proper court of jurisdiction, setting forth facts sufficient to support a reasonable belief that the violation is likely to exist, and that further investigation of the premises is warranted. Any subsequent entry and inspection shall be conducted in accordance with an administrative search warrant issued by the court.
- 2. **Consent to Enter or Warrant not Required**. Consent to enter or an administrative search warrant shall not be required in the following circumstances:
 - a. To conduct inspections during regular county business hours.
 - b. To conduct inspections within the scope of another official document, such as a duly executed zoning compliance affidavit, which grants express or clearly implied consent to enter and inspect;
 - c. To make observations of the premises in plain view from public property or from portions of the premises which are open or accessible to the public, or in which the owner or occupant otherwise lacks a reasonable expectation of privacy; or
 - d. In emergency situations in which the enforcing official has reason to believe that the public health or safety is in imminent danger and could be jeopardized by any delay in securing entry.

- 3. **Notification of Violation**. If a violation exists, the enforcing official shall send a notification to the violator in compliance with the Enforcement Procedures of this Article.
- 4. **Permit Withheld**. In addition to any other enforcement action specified in this Code, the enforcing official is authorized to withhold or demand the withholding of the issuance of any land use permit or related permit under this Code sought or requested for property on which a violation of this Code exists.

B. Judicial Action Against Violations.

- 1. **Request for Civil or Criminal Action**. At the request of the Board, the County Attorney shall be empowered to bring either a civil or a criminal (or both) action against the owner of any premises or property on which a violation of this Code is alleged, and, following investigation, has been confirmed or is reasonably believed to exist.
- 2. **Criminal Remedy**. Criminal violations of this Code shall be punished by a fine in an amount not to exceed one hundred dollars (\$100.00) for each violation or by imprisonment in the County jail for not more than ten (10) days, or by both such fine and imprisonment, or by such other remedy as may be specified by amendment to C.R.S. § 30-28-124. Such fine shall inure to the General Fund at the County. Each day during which such illegal erection, construction, reconstruction, alteration, maintenance, or use continues shall be deemed a separate offense.
- 3. **Civil Remedy**. Civil remedies against violations of this code may include injunction, mandamus, abatement or any other appropriate action or proceeding to prevent, enjoin, abate, or remove the violation; and the fine herein above provided for may be recovered in that same civil action wherein such injunction, mandamus and/or abatement is sought, or separate and district proceedings may be instituted seeking varying forms of relief, as C.R.S. 30-28-124 or any other applicable provision of law may allow.
- 4. **Application of Criminal Remedy**. If the violation alleged is one of the use of any building, structure, or land in violation of this Code, and the enforcing official wishes the County Attorney to pursue criminal remedies, then the enforcing official shall comply with the requirements of C.R.S. 30-28-124(b)(II) by giving written notice to the alleged violator to correct the violation within thirty days after the date of the notice. If the violation is not corrected within the thirty days, the enforcing official may request the County Attorney to pursue criminal remedies in County Court against the violation.
- 5. **Written Notice Required.** A 30-day written notice to correct shall not be required if the violation involves the erection, construction, or alteration of any building or structure in violation of this code (even if criminal remedies are

sought), or if a civil enforcement action is filed. However, even in these cases (unless in the discretion of the enforcing official immediate judicial action is required to prevent or abate the violation), the enforcing official shall provide written notice of the alleged violation to the violator, including a reasonable time period (which may be less than thirty days) to correct, prior to initiating judicial enforcement action.

Section 12.130 Additional Enforcement Regulations Applicable to Subdivision.

A. Requirement for County Subdivision Approval

- 1. **Approval in Compliance with Code Required for Recording**. No plans of streets or highways for public use, or plans, plats, plots, and replats of land laid out in subdivision or building lots or the streets, highways, alleys, or other portions of the same intended to be dedicated to a public use or the use of purchasers or owners of lots fronting thereon or adjacent thereto, shall be recorded in any public office unless the same is approved in compliance with this Code.
- 2. Criminal Remedy, Transfer or Sale Prior to Final Plat Approval and Recording. Any subdivider or agent of a subdivider who transfers or sells land before a Final Plat for the land has been approved pursuant to the requirements of this Code and recorded or filed in the Office of Clerk and Recorder shall be guilty of a misdemeanor and upon conviction thereof shall be fined shall be punished by a fine of not more than one thousand dollars (\$1000.00) nor less than five hundred dollars (\$500.00) for each parcel or interest in subdivided land which is sold or offered for sale. All fines collected shall be credited to the General Fund of the County.
- 3. **Action to Enjoin**. The Board shall have the power to bring an action to enjoin any subdivider from selling proposed subdivided land before a Final Plat for such land has been approved by the Board and filed for recording in the Office of the County Clerk and Recorder. (C.R.S. § 30-28-110(4)(b))
- 4. **Permits Withheld**. In addition to any other enforcement action specified in this Code, the Administrator is authorized to withhold or demand the withholding of the issuance of a land use permit or related permit under this Code sought or requested for property which is determined to have been divided without the required County approval. (C.R.S. § 30-28-110(4)(a))
- 5. **Conformance with Code Required**. Properties that were divided in violation of the County's land use regulations in effect at the time of such division shall be further subdivided only if the proposal includes provisions which bring the entire original parcel, including the area previously divided in violation of County regulations, into compliance with current zoning or subdivision requirements.

B. Enforcement of Subdivision Process and Platting Requirements

- 1. **Authority to Compel Enforcement**. The Board or any purchaser of any lot or other subdivided land subject to a plat restriction which is the security portion of a subdivision improvements agreement shall have the authority to bring an action in any district court to compel the enforcement of any subdivision improvements agreement on the sale, conveyance, or transfer of any such lot or other subdivided land or of any other provision of Part 1, Article 28, Title 30, C.R.S., as amended. Such authority shall include the right to compel rescission of any sale, conveyance, or transfer of title of any lot or other subdivided land contrary to the provisions of any such restriction set forth on the plat or in any separate recorded instrument, but any such action shall be commenced prior to the issuance of a building permit by any county where so required or otherwise prior to commencement of construction on any such lot or other subdivided land. (C.R.S. 30-28-137(3), as amended.)
- 2. **Authority to Bring Action for Injunctive Relief**. In addition to any other remedy set forth in Part 1, Article 28, Title 30, C.R.S., as amended, the Board or any purchaser of any lot or other subdivided land shall have the authority to bring an action for injunctive relief to enforce any plat restriction (including all obligations contained in documents required to be executed and recorded as part of the Final Plat approval and all commitments of record of the subdivider related to the County's approval of the Final Plat), plat note, plat map, or provision of a subdivision improvements agreement, and for damages arising out of failure to adhere to any such plat restriction, plat note, plat map, or provision of a subdivision improvements agreement. Nothing in Part 1, Article 28, Title 30, C.R.S., as amended, shall require the Board to bring any action authorized in this provision. (C.R.S. § 30-28-137(4), as amended.)